INDEX

ABATEMENT:

1. A *qui tam*, action for usury abates by the defendant's death. *Smith v. Walker*, 223.

2. When the defendant dies, and a *sci. fa.* against his administrator regularly issues from term to term, although not actually served until after the lapse of five terms, the suit will not be abated. *Clements v. Hussey*, 414.

ACQUIESCENCE:

When an attorney in fact conveys land, but his power is so defective as not to enable him to convey the legal title, an acquiescence by the owner and his heirs amounts to a confirmation of the contract, and gives an equitable title to the purchaser. *Benzein v. Lenoir*, 117.

AGENT AND PRINCIPAL:

1. An action will not lie against a person who describes himself in the contract which he executes as agent for another. *Potts v. Lazarus*, 180.

2. An action may be sustained in the name of the United States, on a covenant made in their behalf by a public officer, and their special agent *quo ad hoc*, although such agent do not sign and seal the contract in their name. *United States v. Blount*, 181.

ALIEN:

When a subject of the King of Great Britain was duly naturalized in one of the states, before the adoption of the Federal Constitution, and continued to reside there till that event, he became by virtue of it a citizen of the United States. *Seare v. White*, 210.

AMENDMENT:

1. Where several persons were sued in covenant, two of whom, on oyer had, appeared not to be parties to the deed, the plaintiff was permitted to amend by striking out their names on payment of all costs up to the time of amendment. *McClure v. Burton*, 84.

2. The court has power to give leave to amend a declaration upon the payment of costs, after a special demurrer filed and sustained. *Davis v. Evans*, 111.

3. When, in entering up a verdict, a mistake is made in computing interest, and judgment is entered up for less than the plaintiff is entitled to, but such mistake is not discovered until the next session of the court, leave to amend must be refused; for there is nothing to amend by, and to alter it would be to make a new verdict for the jury. *Baker v. Moore*, 441.

4. A *sci. fa.* against heirs may be amended, after the plea of *nul tiel record* pleaded, on payment of the costs up to the time of the amendment. *Williams v. Lee*, 578.

APPEAL:

1. Where there were but twenty-nine days between the last day of the term of the county court and the first day of the Superior Court, it was held that the appellant had until the term following to file the appeal. *Orme v. Smyth*, 32.

2. An appeal bond which leaves out the most effective part required by law, to wit, that the securities shall be discharged on the performance by the appellant of the judgment above, is insufficient. *Forsyth v. McCormick*, 359.

3. If the appellee in the Superior Court suffers the cause to go to the jury, it is an implied waiver of any objection arising from the defectiveness of the appeal bond; and the appellant in such case may proceed in the suit. But the court may, in their discretion, upon a proper case, require further security. *Ferguson v. McCarter*, 544.

4. If an appeal from the county to the Superior Court is not filed within the time limited by law, it must be dismissed, although such omission proceeds from accident, and without *laches* in the appellant; but in such cases a *certiorari* will be granted. *Hoad v. Orr*, 584.

ATTACHMENT:

1. A party may interplead to an attachment at any time before final judgment; and to enable him to do so, it is regular to set aside a default which has been entered up two terms. *Dobson v. Bush*, 18.

2. A creditor, who is a citizen of this State, may attach the property of his debtor found here, though such debtor is a citizen of New York, and, by an insolvent law of that State, his property has been assigned for the general benefit of his creditors. *Bizzell v. Bedient*, 233.

3. A surplus of money in the hands of a sheriff, raised by execution, is the property of the defendant in the execution, is held by the sheriff in his private and not in his official capacity, and is liable to attachment in the hands of the sheriff by the creditors of such defendant. *Orr v. McBride*, 236.

4. By the special wording of the two acts of 1777 and 1793 (1 Rev. Stat., ch. 6) a final judgment in an original attachment is equivalent to a final judgment in any other case; and debt will lie on it. *English v. Reynolds*, 529.

5. An action of debt will not lie on a replevy bond given under the attachment law; a *sci. fa.* being the proper remedy. *Summers v. Parker*, 579.

ASSUMPSIT:

1. In an action of assumpsit against two since the act of 1789 (1 Rev. Stat., ch. 31, secs. 89 and 90), where the jury find that one did assume and the other did not, judgment may be entered in favor of the plaintiff against the one who is found to have assumed. *Jones v. Ross*, 335.

2. Where W. is indebted to both the plaintiff and defendant, and the latter authorizes an agent to collect his debt, but not to bind him by deed, and the agent purchases from W. a vessel on account of his

ASSUMPSIT—*Continued.*

principal, whose debt is to go into part payment, and by an agreement under seal the balance is to be paid to the plaintiff; afterwards the defendant, knowing what his agent had done, approves of it and receives the vessel; still the plaintiff cannot maintain assumpsit against the defendant for the sum agreed to be paid to him by the deed. *Dickinson v. Rodman*, 525.

AVERAGE:

Where a defendant's trunk containing money and apparel was put on board the plaintiff's lighter, which was overset in a sudden flaw of wind, in consequence of not being provided with shifting boards, *it was held* that the defendant was not liable to contribute to the expense of raising the lighter, although by such means he obtained his trunk; for the claim could not be made on the ground of a general average, as that can arise only where a portion of the cargo is sacrificed for the safety of the rest, and that by the direct agency of man, by throwing overboard the cargo of a vessel in a moment of peril, nor any other ground, because the damage and consequent expense was occasioned by the neglect of the owner in not providing shifting boards, which were necessary for the safety of the lighter. *Irving v. Glasier*, 406.

BAIL:

The plaintiff in a *sci. fa.* against bail is not bound to produce the bail bond on the plea of *nul tiel record*. *Mason v. Cooper*, 83.

BAILMENT:

The hirer of a slave is not responsible for his loss, though killed while in the hirer's service, if he used ordinary care and attention, such as a prudent man would afford to his own property. *Williams v. Holcombe*, 33.

BILLS AND PROMISSORY NOTES:

1. If in ordinary cases the maker of a note has become insolvent, has absconded or refused to make payment, this will be sufficient to charge the endorser upon due notice of the fact. *Sullivan v. Mitchell*, 98.

2. A personal demand on the maker is not necessary; it is sufficient if it be made at his house; but if the house be shut and the maker gone away, some endeavors must be made to find him out. *Ibid.*

3. Whenever a bill of exchange or note is made payable at a particular place, a demand at that place is sufficient, and a personal one is not necessary, whether the maker live at the same place or a different one. *Ibid.*

4. A note made payable at a particular bank must be demanded at the bank, in order to render the endorser liable. *Ibid.*

5. An endorsement in full on a negotiable instrument may be struck out on the trial. *Dickinson v. Van Noorden*, 109.

6. When a note was endorsed as follows: "Pay the contents to W. or his order, for value received, with recourse to me at any time thereafter, without further notice," *it was held* that a cause of action accrued

BILLS AND PROMISSORY NOTES—*Continued.*

against the endorser, without notice, from the return of an execution against the drawer, by which nothing was made; but the terms of the endorsement did not render the endorser liable at any indefinite period of time. *Wister v. Tate*, 404.

7. Notice to an endorser of the nonpayment of a note should be given by the holder or by some person authorized by him. It should also intimate to the endorser that he is looked to for the payment of the money. *Brower v. Wooten*, 507.

8. A person endorsing a note for the accommodation of the maker is entitled to notice of nonpayment. *Smith v. McLean*, 509.

9. Where a note is made payable at a particular bank, it must be presented there when it falls due; otherwise, the endorser is discharged; and that even although the maker of the note dispenses with such notice. *Ibid.*

10. If the attorney employed by the owner of a note to sue on it strike out an endorsement, it discharges the endorser. *Ibid.*

BILL OF REVIEW:

A bill of review will not lie when the complainant himself dismisses the bill. But if on a demurrer to a bill of review the court reverses the decree, without the objection that the original bill had been dismissed by the complainant being brought to its notice, the question of dismissing the bill of review is not open *on motion;* a petition to rehear being necessary. *Jones v. Zollicoffer*, 45.

BOND:

1. Although a bond is not invalidated by being made without consideration, or with an inadequate one, yet evidence of either fact may be received when the question is whether the bond was made under such circumstances of *fraud and imposition* as render it void in law. *Lester v. Zachary*, 50.

2. When a bond is given for the hire of a slave for a year, in the course of which time the slave becomes disabled and ultimately dies, there can at law be no apportionment of the sum agreed to be paid. *Ragland v. Cross*, 219.

3. An action will not lie on a bond, part of the consideration of which is an agreement not to prosecute for malicious mischief. *Cameron v. McFarland*, 299.

4. Every transaction the object of which is a violation of public duty is void; such as bribes for appointing to offices of public trust, private engagements that an office shall be held in trust for a person by whose interest it was procured, agreements to stifle prosecutions of a public nature; and whenever it is attempted by a contract to prevent the due course of justice, as if one promise money to another to suppress his testimony in a cause, etc., the law gives no remedy. *Ibid.*

BOUNDARY:

1. When a patent calls for a stake in the line of another patent, and then a certain course "with or near" a line of the latter, it must stop at

BOUNDARY—*Continued.*

the intersection with the first line of the latter, if the second line from that point would run *with* or *near* the line of the patent called for, but would not do so if run from the intersection with the second line. *Bradberry v. Hooks*, 443.

2. The court will not decide on the admissibility or effect of evidence respecting the actual running a line when such evidence was not introduced, as such a question is purely abstract. *Ibid.*

3. Where the patent described the land as lying on the north side of a river, and the line in dispute called for "a pine on the Marsh Branch, then along the said branch 320 poles, thence to the beginning," and the branch meets the river at a shorter distance, *it was held* that the branch was the boundary, and the mouth of it the corner of the land covered by the patent, and that the distance was to be disregarded. *Carroway v. Witherington*, 694.

CATTLE:

The penalty under the act of 1741, for mismarking cattle, cannot be incurred unless the offense be willfully done. *Hulin v. Biles*, 625.

CERTIORARI:

1. If the clerk of the county court neglect to take a bond from the party previously to issuing a *certiorari* as directed by the act of 1810, (1 Rev. Stat., ch. 4, s. 16), the Superior Court has power to take bond with good security for the prosecution of the suit. *Fox v. Steele*, 48.

2. A *scire facias* will not lie on a bond given upon obtaining a writ of *certiorari*. *Ibid.*

3. When a person applies for the extraordinary remedy of a *certiorari*, he ought to show good reason why he did not avail himself of the ordinary remedy by appeal; otherwise, a *certiorari* will not be granted. *McMillan v. Smith*, 173.

4. In considering the propriety of sustaining or dismissing a *certiorari*, on an appeal from the decision of the Superior Court, the Court will not notice affidavits on either side which have been made and sworn to since the case was transferred to the Supreme Court. *Ibid.*

5. Where the defendant appealed from the county to the Superior Court, but by mistake the plaintiff executed the appeal bond instead of the defendant, the appeal was dismissed for want of a proper bond; but a *certiorari* was directed, on the defendant's motion. *Speed v. Harris*, 317.

6. If the clerk of the county court neglect to take a bond from the party, previously to issuing a *certiorari*, as directed by the act of 1810 (1 Rev. Stat., ch. 4, s. 16), the Superior Court has power to take bond with good security for the prosecution of the suit. *Rosseau v. Thornberry*, 326.

7. When a party swears that a judgment final by default was taken against him at the appearance term, which he was prevented from attending by a violent attack of sickness; that he applied at the next term to have the judgment set aside, which was refused, and that he has merits, a *certiorari* will be granted him. *Dyer v. Rich*, 413.

CERTIORARI—*Continued.*

8. When the clerk of the county court acted as deputy of the clerk of the Superior Court, and promised the appellant to file the appeal, and though he did not actually place the papers in the office, considered them as filed, and so informed the clerk of the Superior Court, but the papers were not actually filed until a week before the court, a *certiorari* was granted. *Steele v. Harris*, 440.

9. Where an undue allowance of a year's provision is made to a widow, a distributee of the estate is entitled to a *certiorari*, because the act of Assembly recognizes his right, *quoad hoc*, as a legal one. *Bryan v. Perry*, 617.

10. Every person affected in interest by an *ex parte* proceeding in an inferior court shall have, upon a proper case, a writ of *certiorari*. Their rights shall not be concluded by an *ex parte* transaction; but they shall have an opportunity of a trial; and as the writ of *certiorari* is the only remedy, they shall have that. The year's provision to which a widow is entitled under the act of 1796 (1 Rev. Stat., ch. 121, secs. 18 and 20) is for the easy and comfortable subsistence of *herself and children*, and their necessary servants or attendants; and not for the support of the slaves and stock which she obtains as her part of her husband's estate, or otherwise acquires after the death of her husband. *Ibid.*

CHARITABLE USE:

A charitable purpose, under the statute of 43 Elizabeth, must be so described in a will that the law will at once acknowledge it to be such. *Haywood v. Craven*, 360.

CONSTITUTION:

1. The act passed in 1812 "to suspend executions for a limited time," commonly called the Suspension Act, is unconstitutional, it being prohibited by that part of section 10 of Article I of the Constitution of the United States which says that no State shall pass any "law impairing the obligations of contracts." *Jones v. Crittenden*, 55.

2. That part of the suspension act of 1812 which authorized bonds to be given to the sheriff having an execution in his hands, and execution to issue, is constitutional. *Berry v. Haines*, 311.

3. A law may be valid in some parts, though in others it infringe the Constitution, and only such parts of the suspension law as impair the obligations of contracts are void. Therefore, a surety, who had executed a bond under the act, was held liable to an execution, without a suit and without notice of a judgment to be moved against him. *Ibid.*

4. An act of the Legislature emancipating slaves belonging to the estate of an intestate, without the consent of the administrator, is unconstitutional. *Allen v. Peden*, 442.

CONTRACT:

Where A. contracted to sell a tract of land to B. by a written agreement, and gave up the possession to B., with an express stipulation that the title should remain in the vendor till the purchase money was wholly

CONTRACT—*Continued.*

paid, and afterwards an execution issued against A., which was levied upon this land, and it was sold to C., who had notice of B.'s equitable claim, *it was held* that the land was liable to the execution, which, with the sale, divested A.'s legal title; but that as B. purchased with notice of C.'s equitable claim, he should convey to him upon receiving the unpaid balance of the purchase money. *Linch v. Gibson*, 676.

CONFISCATION:

1. A person who, being a prisoner of war in July, 1777, and refusing to take the oath of allegiance, conveyed lands to his son, then a resident of this State, might lawfully do so, notwithstanding the confiscation acts passed in 1777, 1779, and 1782. *Campbell v. McArthur*, 552.

2. The confiscation acts have no retrospective operation, except such as is confined to the property of the enemy. So that if an estate has been conveyed from one enemy to another, it is still within their operation; but if from an enemy to a citizen, it then has the guaranty of the Constitution. *Ibid.*

3. There is no principle in the common or statute law of this State, nor in the law of nature, which forbids any individual, upon the formation of a new government, to dispose of his property and to remove his person. *Ibid.*

COSTS:

1. A plaintiff who fails in his action is liable to the costs of all the defendant's witnesses, though they were not examined, if it appear that they were called, sworn, and put in the care of the sheriff. *Venable v. Martin*, 128.

2. Where heirs were made parties by *sci. fa.* to an action of trespass *quare clausum fregit* originally brought against their ancestor, and after the lapse of several years the *sci. fa.* was dismissed on the defendant's motion, on the ground that they were not properly made parties, *it was held* that they were not entitled to costs, as they would have been had they plead in abatement. *Porter v. Knox*, 134.

3. On the acquittal of a defendant in an indictment for petit larceny, the court may order the prosecutor to pay the costs. *S. v. Lambrick*, 156.

4. In no case where the punishment extends to life, limb, or member, can the court, on the acquittal of the defendant, order the prosecutor to pay costs. But in all other cases it may be done under the act of 1800 (1 Rev. Stat., ch. 35, sec. 27), if the prosecution should appear to be frivolous or malicious. *Ibid.*

5. When an indictment is found, upon which the defendant is recognized to appear from term to term, and afterwards a *nolle prosequi* is entered upon a defect being discovered in the bill, the defendant will be liable to pay for the attendance of the witnesses the whole time, if a new bill be found against him for the same cause and he be convicted thereon. *S. v. Harshaw*, 230.

COSTS—*Continued.*

6. If an indictment be quashed, and the prosecutor be ordered to pay the costs, he is not liable to pay for the attendance of witnesses on either side. *Office v. Gray*, 307.

7. When the lessor of the plaintiff in ejectment enters on the premises during the pendency of the suit, he becomes liable to pay the costs of the suit. *Gubbs v. Ellis*, 415.

COVENANT:

1. No action can be maintained upon a charter party to recover freight, without the plaintiff's averring in his declaration, and proving on the trial, that he had carried the goods according to the terms of the covenant. *Lorent v. Potts*, 86.

2. In an action of covenant for quiet enjoyment, a recovery of damages in trespass *quare clausum fregit* is sufficient to amount to a breach. *Williams v. Shaw*, 630.

3. The judgment in such action is evidence to show the eviction, but is not conclusive against the warrantor as to the title of the land. *Ibid.*

DEED:

1. Where by deed a negro slave was given "to J. C. and his heirs, for him and his wife to have the use of the said slave their natural lives, and at their death for said negro and increase to be equally divided amongst their children, the said J. C. to use the said negro as his own property, not to sell her, but for his heirs to use and sell, at their own free will and pleasure," *it was held* that the proper construction of the deed gave to J. C. a legal estate for life in the slave, with a legal remainder to his children, which, being contrary to law, J. C. took an absolute interest in the slave. *Dowd v. Montgomery*, 198.

2. A bill of sale, like other deeds, takes effect from the delivery. A bill of sale which purported on its face to have been executed on 10 November, 1810, but which was attested by the only subscribing witness on 10 January, 1811, was held to have been delivered at the last period, there being no proof of any prior delivery. *Nichols v. Palmer*, 319.

3. A deed cannot operate as a bargain and sale unless it has a pecuniary consideration; nor as a covenant to stand seized to uses unless the consideration be love and affection for a near relation, or marriage. Affection for an illegitimate child is not a sufficient consideration. *Blount v. Blount*, 389.

4. Where an attorney in fact conveys land in his own name without reference to his power or his principal, nothing passes by the deed. *Scott v. McAlpin*, 587.

5. Where a deed described a tract of land which was conveyed by it, and then followed these words, "one-half acre of land where my graveyard is, etc., is excepted; together with 45 acres, etc., also another tract containing 50 acres, etc.;" *it was held* that the graveyard only was excepted, but the two last tracts were granted. *Jordan v. Hollowell*, 605.

DEPOSITION:

1. A notice to take the deposition of a witness living in Georgia, on one of three successive specified days, is sufficient. *Harris v. Peterson*, 358.

2. In equity the deposition of a witness who is dead, which has once been read upon the hearing of a suit, may be read again, though taken before a single person. *Carver v. Mallet*, 562.

DESCENT:

1. Where a person seized in fee prior to 1784, devised lands to his heir at law in tail, *it was held* that the heir took by purchase; that the act of 1784 (1 Rev. Stat. ch. 43, sec. 1), which subsequently converted the estate tail into a fee simple, did not change the original form of the acquisition, which still continued to be by purchase; and that, therefore, when the devisee died leaving a brother and sister of the half blood in the maternal line, and more distant relatives in the paternal line, the former were entitled to the inheritance. *Ballard v. Griffin*, 237.

2. Where a devisee takes the same estate under the will which he would have done had the ancestor died intestate, he is in by descent and the devise is void. Hence, where a testator devised lands in 1788 to be equally divided among his two daughters (they being his only children, to them and their heirs forever, they took as tenants in common, as they would so have taken under the act of 1784 (Rev., ch. 204), had he died intestate. *University v. Holstead*, 289.

3. And in such a devise, if the mother survive the daughters, both of whom dying intestate and without issue, she will not be entitled to a life estate under the act of 1784 (Rev., ch. 204, sec. 7, and ch. 225, s. 3), because the derivation from the parent there mentioned signifies by some act *inter vivos*. *Ibid.*

4. Under the acts of 1784 the aunt of the whole blood on the side of the mother from whom the lands descended shall take in exclusion of a brother of the half blood on the part of the father. *Hilliard v. Moore*, 392.

DEVISE:

1. Where a testator devised as follows: "I give and bequeath to the children of G. W. L., provided he has any, if not, to the heirs of my sister S., the land which lies between the road, etc.," and it did not appear from the will that the testator knew of his sister S. being alive, *it was held* that the word "heirs" must be taken in its legal acceptation, and will not operate as a *descriptio personarum*. *Stith v. Barnes*, 96.

2. Where a testator in 1783 devised "to his son B. 350 acres of land," and by another clause devised thus: "I give and bequeath to my son B. and my four daughters all the rest of my estate, consisting of various articles too tedious to mention," *it was held* that B. took only a life estate under the first clause; and that the reversion did not pass to B. and the daughters under the residuary clause, but descended to the heir at law, though there was a clause in the will giving him twelve shillings. *Harrison v. Mills*, 149.

DEVISE—*Continued.*

3. A devise of land "to A. and the male heirs of his body, lawfully issuing, and if A. dies without leaving lawful issue as aforesaid, I give the land to the eldest son of B." means a dying without issue living at the death of A., and the devise is a good executory one to B.'s oldest son. *Jones v. Spaight*, 157.

4. Where a testator devised "to his grandson A. L. 350 acres of land, being the upper part of a tract of 700 acres; and to his granddaughters P. L. and J. L. the lower part of the same tract, to be equally divided between them," and the tract of land was found to contain in fact 1,100 acres, *it was held* that the grandson, A. L., was entitled to only 350 acres, and the granddaughters to 375 acres each. *Williams v. Lane*, 246.

5. Describing a tract of land as containing a specific number of acres is the same as the description of a tract containing so many acres more or less. *Ibid.*

6. Where a testator devised lands to his "daughter A. B., to her and her husband during each of their lives, and no longer, if dying without any lawful heirs begotten of their bodies, and if any lawful heir, to that and its heirs forever; otherwise, to return to my heirs at law and their heirs forever," it was held that the limitation came within the rule in *Shelley's case*, and that upon the death of the husband, the land survived to the wife in fee. *Williams v. Holly*, 266.

7. Where a testator devised lands "unto B. B., to him and his heirs of his body, lawfully begotten; and for want of such, to the heirs of M. T. B." and, in other parts of his will noticed that M. T. B. was then living, but she had no children then, or ever afterwards, *it was held* that the limitation to the heir of M. T. B. was contingent, dependent upon the estate tail in B. B., and that upon his dying without issue in the lifetime of M. T. B., the remainder never took effect. *Chessun v. Smith*, 274.

8. Where a testator, having a storehouse and tavern in a town adjoining each other with a curtilage in the rear of both, devised the storehouse to his wife for life, remainder to his son, and by another clause devised to his son-in-law and daughter his "large tavern, excepting, however, the room over the store, which is to belong to the store," *it was held* that the ground in the rear of both buildings passed under the devise of the tavern; for the exception of the room over the store indicated a belief in the testator that he would have conveyed that, too, under the devise of the tavern, without such exception, and, besides, a curtilage is necessary to a tavern, but not to a store, in a town. *Barge v. Wilson*, 278.

9. Wherever the intention of a testator is to create a trust which cannot be disposed of to charitable purposes, and is too indefinite to be disposed of to other purposes, it reverts to the heir at law or next of kin. Hence, a direction by a testator that his slaves shall be set free, or a bequest to his executors of his slaves in trust that they will set them free, is against public policy and void, and the slaves consequently result to the next of kin. *Haywood v. Craven*, 360.

DEVISE—*Continued.*

10. Where a testator devises a mill to one of his sons, and to another an entry of land which included the land used for a pond, the part covered by the pond passes to the first son by the devise of the mill. *Lee v. Woodward*, 537.

11. Where a testator bequeathed to his wife "two negroes, during her natural life, and one-half the land which I now live on, during her natural life, and then to return to my son William," *it was held* that the limitation to the son was confined to the land, and that the negroes were distributable after the death of the wife among the next of kin of the testator. *Sneed v. Harris*, 672.

12. Where a testator devised land, and afterwards sold it, but did not convey, *held* that the will was not thereby revoked. *McRainey v. Clark*, 698.

DOWER:

Where a deed was executed by a woman and her intended husband, before their marriage, by which he conveyed all the land he then had or might thereafter acquire in trust for certain purposes, *it was held* that this deed could only operate upon such lands as the bargainor had at the time of its execution, and that lands acquired subsequently did not pass under it; and that, therefore, the wife was endowable of all the lands subsequently acquired. *Arrington v. Arrington*, 232.

EJECTMENT:

1. In ejectment the first grant will prevail, without regard to the time of entry or survey; and in such case no evidence will be received to show that the grant was obtained by fraud. *Williams v. Wells*, 52.

2. If, in ejectment, the lessor of the plaintiff claim title under a grant describing the lands as confiscated lands, the property of a certain person, it is incumbent on him to show that the lands had been confiscated to authorize the issuing of the grant. *Hardy v. Jones*, 144.

3. Where A. conveys to B. with warranty, and B. to C. with warranty, and C. is evicted, whereupon B. pays C. and A. pays B., A. cannot support an action of ejectment for the land, for having once conveyed it, the repayment of the purchase money cannot operate as a reconveyance. *Clayton v. Markham*, 213.

4. When the defendant in an action of ejectment died between the spring and fall terms of the same year, and his death was suggested at the latter, a service on the guardian of the infant heirs on the first day of the ensuing term is sufficient under the act of 1799 (1 Rev. Stat., ch. 2, sec. 7). *Ray v. Simpson*, 227.

5. No very strict certainty in the description of lands in a declaration in ejectment is necessary to warrant the writ of possession. Hence *it was held* that a description in the following terms was sufficient for that purpose: "one tract of land, containing 150 acres, lying and being in the county of Martin, and State aforesaid, in the lowgrounds of Roanoke, on the south side, it being part of 350 acres granted to J. M. 7 November, 1730, beginning at a sycamore tree, supposed to be Colonel C. P.'s line, and so extending out and in, according to courses

EJECTMENT—*Continued.*

of patent aforementioned, to conclude and make out the above said 150 acres, with the appurtenances." *Byrd v. Clark*, 425.

6. A color of title, without seven years continued possession, will not entitle the plaintiff in ejectment to recover, even against an intruder. *Sheppard v. Sheppard*, 545.

ENTRY:

1. No cases in relation to the entry or vacant lands are operated upon by the act of 1779, authorizing *caveats, except* those which arose from the discontinuance of the land offices. In all other cases the first enterer must prevail. *McNeil v. Lewis*, 517.

2. The acts of limitation in regard to land titles are founded upon the presumption that a grant once existed and has been lost; but in a *caveat* both parties admit the land to be vacant, and the question is, To whom shall a title be made? *Ibid.*

EQUITY:

1. A court of equity will not interfere where the party has a fair and complete remedy at law. Therefore, it will not entertain a bill to compel a reprobate of a will, the complainants having been infants and not represented when the will was proved. *Thorn v. Williams*, 30.

2. Where the administrator sells at vendue a slave, as the property of his intestate, and recovers judgment on the bond given for the purchase money, and the son of the intestate, claiming the slave by gift from his father, threatens to sue him for it, equity will prevent the suit by injunction, as the parties are now all before the court and full justice can be done them; and it will also prevent the administrator from taking out execution until the title is ascertained or the purchaser indemnified. *Curtis v. Hartsfield*, 114.

3. A person being an alien is a good reason for not making him a party. *Benzein v. Lenoir*, 117.

4. Where suits are brought in a court of equity over the subject-matter of which courts of common law, as well as the court of equity, have jurisdiction, the court of equity will consider itself as much bound by the statute of limitations as a court of law; but where it has exclusive jurisdiction, as in all cases of trusts, the statute does not stand in the way. *Ibid.*

5. Where one signed his name to a blank administration bond, under a well-founded belief that another was to become security with him, but who failed to become so, equity will not grant relief against him who signed. *Webb v. Jones*, 123.

6. Where a testator devises all his estate to his wife, after payment of debts, and does not direct out of what fund they shall be paid, and the will passes only personalty, having but one witness, equity will not interpose, in favor of the widow, to exonerate the personal estate and charge the real estate with the payment of the debts. *Carney v. Coffield*, 140.

EQUITY—*Continued.*

7. Where a party has a legal defense and neglects to avail himself of it in a court of law, he cannot have relief in equity. *Gatlin v. Kilpatrick*, 147.

8. Equity cannot relieve against a verdict at law for being contrary to equity, unless the plaintiff knew the fact to be different from what the jury have found it and the defendant was ignorant of it at the time of trial, or where effectual cognizance cannot be taken at law, or where a verdict is obtained by fraud. *Ibid.*

9. A creditor or next of kin cannot, without special circumstances, call upon a debtor to the estate, but a bill will be entertained for either against all persons in possession of the fund who have not paid for it a valuable consideration, the administrator or executor of the estate being a party to the suit. *Blanchard v. McLaughan*, 295.

10. A bill in equity will lie in the courts of this State to compel the conveyance of lands in Tennessee, if the defendant be within the jurisdiction of the court. *Orr v. Irwin*, 351.

11. A court of equity still retains its jurisdiction in cases of contribution of surety against another, notwithstanding the act of 1807 (1 Rev. Stat., ch. 113, sec. 2) gives a jurisdiction in such cases to the courts of law. *Shepherd v. Monroe*, 427.

12. Where a judgment is recovered at law on a gaming bond, equity will not interfere, if no fraud was used in obtaining the judgment, or the complainant was not prevented from making a defense at law. *Jones v. Jones*, 547.

13. A court of equity will not interfere where the ordinary rules of law afford complete and adequate relief; for the object of equity is to supply the deficiencies of the law. Therefore, where a person has a right to a ferry, and another sets up a free ferry in the neighborhood, whereby the owner of the ferry loses his profits, an injunction will not be granted to stay the free ferry, because a court of law may place the owner of the ferry *in statu quo*. *Long v. Merrill*, 549.

14. A court of equity will not proceed against an infant unless defended by a guardian *ad litem;* and the court cannot appoint a guardian for an infant out of the jurisdiction of the court. *Jones v. Mason*, 561.

15. As a court of equity acts *in personam*, it cannot dispense with the personal service of process, in cases not provided for by statute. Hence, it will not proceed on a bill to foreclose a mortgage where all the defendants are infants and reside in another State. *Ibid.*

ESTOPPEL:

1. He who accepts a lease from another, and those claiming under him, are estopped, during the continuance of the lease, to deny the title of the lessor. *Sacarusa v. King*, 336.

2. One who hires a negro from another, by which he has obtained possession of the negro, shall not dispute the right of the hirer until he has restored the possession. *Dunwoodie v. Carrington*, 355.

ESTOPPEL—*Continued.*

3. Executors are not estopped to claim in their own right lands in a deed which they have endorsed and attempted to confirm under an express reference to the powers confided to them by the will of the testator. *Hendricks v. Mendenhall*, 371.

EVIDENCE:

1. Where the name of a subscribing witness to a bond is written by the obligor, the person whose name is signed as a witness not being present at the execution of it, it is the same as if there were no subscribing witness, and in such case proof of the obligor's handwriting is sufficient. *Allen v. Martin*, 42.

2. Parol evidence is not admissible to show that a devisor used the word "heirs" in his will in a different sense from the legal meaning. *Stith v. Barnes*, 95.

3. Parol evidence is inadmissible for the purpose of proving an agreement inconsistent with and repugnant to a bond of submission to arbitration executed by the parties. *Hawkins v. Hawkins*, 107.

4. The rule of law which disallows the introduction of parol evidence for the purpose of contradicting, altering, or varying a deed, applies only to the *parties* to the instrument. *Ibid.*

5. The declarations of a person, now deceased, respecting a corner made when he was the owner of the land, are not evidence in favor of one claiming under such owner. *Smith v. Walker*, 127.

6. Parol evidence is not admissible to show that the condition upon which the price of a horse was to be paid was different from the purport of the note given for the price. *Gatlin v. Kilpatrick*, 147.

7. In an action by a father for the seduction of his daughter, her examination taken before two magistrates for the purpose of charging the putative father with the maintenance of the child under the act of 1741 (1 Rev. Stat., ch. 12, sec. 1) is not admissible evidence against the defendant to prove the fact of seduction. *McFarland v. Shaw*, 200.

8. In an action by a father for the seduction of his daughter, he may give in evidence the dying declarations of the daughter charging the defendant with having been her seducer. *Ibid.*

9. Where the defendant gave the plaintiff a writing not under seal, acknowledging the sale of a note of hand and the receipt of part payment, and that the balance was to be paid when the money was collected, *it was held* that the plaintiff could not prove by parol that the defendant, at the time of the contract, promised to commence an action within ten days against the maker of the note. *Clark v. McMillan*, 244.

10. Where the acts of a person may be given in evidence for him, his declarations in relation to these acts are also proper evidence. Hence, *it was held* that where a person was seen hunting the road with his friends and servants, his declarations that he was hunting for lost notes are evidence of the loss of the notes. *Schenck v. Hutcheson*, 515.

EVIDENCE—*Continued.*

11. Parol evidence cannot be received to contradict the records of the county court, confirming the report of a jury laying out a road. *Cline v. Lemon*, 328.

12. The interest to disqualify a witness must exist at the time of trial, and, if before that, the witness removes the interest by releasing it, or does all he can to remove it, as by filing a release in the clerk's office when the party is not present to accept it, his competency is restored. *Perry v. Fleming*, 344.

13. Fraud in obtaining a bond will vitiate it, and evidence tending to show it is admissible under the general issue. *Ibid.*

14. When it is clearly proved, by evidence other than the party's own oath, which is inadmissible for that purpose, that a writing is lost by time or accident, parol evidence of its contents is admissible, but not otherwise. *McFarland v. Patterson*, 421.

15. A trustee defendant, having a legal interest altogether nominal, is an incompetent witness at law, but not in equity, as to merits or designs of the trust deed. *Hawkins v. Hawkins*, 431.

16. The rule of admitting hearsay to prove the boundaries of land must be confined to what deceased persons have said; for if they are alive at the time of trial, though out of the State, their depositions must be taken. *Gervin v. Meredith*, 439.

17. Where a deed conveys a specific number of acres, and no corner is named in the deed, parol evidence is not admissible to establish a line in contradiction to the deed which shall contain less land than the specified quantity. *Herring v. Wiggs*, 474.

18. Where a deed purports to be governed by an old line, which is placed upon the records, parol evidence as to the intention of the parties, tending to control the deed, ought not to be received. *Ibid.*

19. A subscribing witness to a note, to whom it is afterwards endorsed, and who then endorses it *without recourse*, and is also released by the endorsee, is a competent witness to prove its execution. *Billingsly v. Knight*, 540.

EXECUTORS AND ADMINISTRATORS:

1. When a testator gives his executors authority to sell land, all the acting executors alive at the time must join in the sale. *Debow v. Hodge*, 36.

2. An executor may sue in this State upon letters testamentary issued upon a probate in another State. *Stephens v. Smart*, 83.

3. The claim of the next of kin is from and through the administrator; but he cannot claim above him. Hence, an action cannot be sustained under the acts of 1715 and 1793 (1 Rev. Stat., ch. 46, sec. 3, and ch. 81, secs. 1 and 2), by a person entitled to a distributive share of an intestate's estate, against the clerk of the county court, for neglecting to take an administration bond. *Daughtry v. Hayne*, 92.

4. An action for deceit in the sale of a chattel will lie against the executors or administrators of the seller, under the act of 1799 (1 Rev. Stat., ch. 2, sec. 10). *Arnold v. Lanier*, 143.

EXECUTORS AND ADMINISTRATORS—*Continued.*

5. Where coexecutors live in different counties, a warrant from a justice against one of them living within his jurisdiction shall not be abated because it was served on him only, and not on those living in other counties. *Park v. Morrison*, 155.

6. One administrator, where there are two, cannot discharge a debt due to the estate by receiving a proved account against the intestate, although the receipt purports to be in satisfaction of the debt. But a payment to one of the administrators would have been good. *Mangum v. Simms*, 160.

7. Where a sale was made by an administrator under the act of 1794 (see 1 Rev. Stat., ch. 46, sec. 11) on a credit, before the commencement of the action, but the proceeds not received until after plea pleaded, proof of these assets shall not be given against the administrator. For the issue is whether the administrator had assets at the time of plea pleaded; and the plaintiff may prove assets received by the defendant between the time of issuing the writ and entering the plea, but not afterwards. *Gregory v. Hooker*, 215.

8. In a *sci. fa.* upon a judgment *quando*, the plaintiff may recover such assets coming to defendant's hands after plea pleaded in the original action as are not already bound by outstanding judgments. *Ibid.*

9. An executor or administrator may pay debts of an inferior nature before he has notice of those of a superior nature, if he does so without fraud. *Delamothe v. Lanier*, 296.

10. A contingent debt, though secured by specialty, shall be postponed to a simple contract debt. *Ibid.*

11. An executor or administrator cannot purchase at his own sale, and must account for any negroes bid off by him at his sale of his intestates property, to the creditors, if any; if none, to the legatees or next of kin. *Britton v. Browne*, 332.

12. When an administrator confesses judgment on a penal bond, the condition of which is that the intestate shall execute a marriage settlement within six months after his marriage, the assets are protected by the amount of the judgment, although such bond was not registered. *Richardson v. Fleming*, 341.

13. Persons named executors in a will, which has been proved, who fairly contest the probate of another paper produced as a will after a considerable interval and under circumstances fitted to awaken suspicion, though afterwards established, will be permitted in equity to charge the expense of litigation upon the estate. *Mariner v. Bateman*, 350.

14. The executor's assent to the first taker is an assent to all subsequent takers of a legacy, limited over by way of remainder in executory devise. But this rule does not prevail where, after the death of the first taker, the executor has a trust to perform arising out of the property, which therefore must be subjected to his control, and, of course, he must have the legal title. *Dunscoodie v. Carrington*, 355.

15. Judgments obtained against an executor, after service of a writ and before plea, make him responsible for the assets he had when served

EXECUTORS AND ADMINISTRATORS—*Continued.*

with the writ, although such judgments are entered up *quando;* the executor having sold the property of his testator under the act of Assembly, between the time of the service of the writ and the judgments *quando*. *Littlejohn v. Underhill*, 377.

16. Such judgments may be pleaded, although given by a magistrate for a sum exceeding £30, provided the warrants do not exceed that sum. The charge of keeping an old and infirm slave is a charge in favor of the community upon the estate of a testator in the hands of his executor under the act of 1798 (1 Rev. Stat., ch. 89, sec. 20), and is to be paid in preference to the claims of any individual. *Ibid.*

17. Judgments confessed by an executor or administrator is not a good plea for him. *Collins v. Underhill*, 381.

18. Where letters of administration are granted in the court of a county in which the intestate never resided, they are void; and being a nullity, a petition to set them aside will be dismissed. *Collins v. Turner*, 541.

19. Where the same person is administrator or executor of both the creditor and the debtor, and has assets of the debtor in his hands sufficient to discharge the debt, the debt is extinguished. *Muse v. Hornblow*, 637.

20. If a legatee in a will is also executrix, and elect to take as legatee, her power as executrix over the property bequeathed thenceforward ceases; her assent operates for the benefit of the ulterior remaindermen, and converts their equitable into a legal estate. *Jones v. Zollicoffer*, 645.

21. A younger equity can in no case prevail over an older one, but where it has also the law; for the rule is that where there is equity on both sides, the law shall prevail. *Ibid.*

22. An executor who promises to pay a debt of his testator, and has assets at the time of the promise, is personally bound. *Sleighter v. Harrington*, 679.

23. The court have a discretionary power of allowing executors and administrators *5 per cent* on the receipts and *5 per cent* on the disbursements; and though they may allow less, they cannot allow more. But executors and administrators cannot be allowed commissions on a debt due to them as executors of another person. *Bond v. Turner*, 690.

EXECUTION:

1. An equitable right in land cannot be sold under an execution at law. *Payne v. Hubbard*, 195.

2. An equitable right in land is subject to execution and sale under the act of 1812 (1 Rev. Stat., ch. 45, secs. 4, 5, and 6), and equity will not compel a *bona fide* purchaser to pay the balance of the judgment when the land sells for less, although the execution issues at the suit of the legal owner and the equitable owner is insolvent. *Deaton v. Gaines*, 424.

EXECUTION—*Continued.*

3. Where a slave in the hands of an administrator *de bonis non* was taken in execution and sold for a debt due from two of the next of kin and legatees, and was delivered by the officer to the purchaser, *it was held* that the administrator might sustain an action against the officer; for that the slave was not liable to execution under the act of 1812 (1 Rev. Stat., ch. 45, sec. 4), which affected only express trusts and not equitable interests in the nature of trusts. *McIlwin v. Carraway*, 626.

4. An order of the county court for the sale of land, after a constable's levy and return of no chattels, is not a judgment, though it may have the quality of one in attaching a lien upon the land. Hence, a writ, which cannot be sustained unless there be a judgment or something equivalent, will not lie upon such an order. *Bowen v. Lanier*, 673.

5. Errors in law cannot be assigned to process in the nature of an execution, for that, if irregular, must be set aside in a different way, as by motion, *supersedeas*, or the like. *Ibid.*

6. A sale of land under a *fi. fa.* which issued and bore *teste* after the death of the person who died seized, without any *sci. fa.* against his heirs or devisees, conveys no title to the purchaser. *Bower v. McCullough*, 684.

EXTORTION:

Where, in an indictment for extortion, the jury found that the defendant took more than his legal fees, but did not take them corruptly, such finding is equivalent to a verdict of acquittal, and the defendant must be discharged. *S. v. Bright*, 437.

FACTOR.

1. If one purchase goods from a factor, and pay him for them before he is forbidden by the owner, the payment is valid. *Golden v. Levy*, 141.

2. A sale by a factor creates a contract between the owner and the purchaser, and the latter may pay the owner against the orders of the factor. Hence, where the plaintiff, a captain of a vessel which was stranded, employed the defendants to sell the cargo saved, as auctioneers, which they did, and paid the amount to the owners of the goods, except the freight *pro rata* due the captain, such payment was held good. *Ibid.*

FERRY:

When an ancient ferry has been established and kept, the court will not erect a new one so as to injure the old one, unless it be evident that the public sustains an inconvenience for the want of it. The public faith to the first grantee ought not to be violated upon a speculative possibility of general convenience. *Beard v. Long*, 107.

FIRING THE WOODS:

The penalty for setting fire to the woods is incurred under the acts of 1777 and 1782 (1 Rev. Stat., ch. 16), unless two days notice is given to the owners of adjoining lands; and an agreement of one neighbor to take shorter notice will not bar a stranger from recovering the penalty under those acts. *Wright v. Yarborough*, 687.

FRAUD AND FRAUDULENT CONVEYANCE:

1. A prior voluntary conveyance of land shall prevail against that of a subsequent purchaser, unless the latter is fair and honest. Hence, where A., in consideration of blood and affection, conveyed his lands to his only son, and afterwards, for a valuable consideration, sold the same land to B., but with the intention of defrauding his creditors, *it was held* that the son was entitled to recover from one who purchased of B. with notice of the circumstances. *Squires v. Riggs*, 253.

2. Inadequacy of consideration, embarrassed circumstances in the grantor, his remaining in possession of the lands after the sale, the secrecy of the transaction, form a combination of presumptions indicative of fraud. *Darden v. Skinner*, 259.

3. Whatever may be the external formality of a deed, yet if its design be to defraud creditors, it is void; and even without such present design, a deed of gift to a child, unattested by a subscribing witness, is void against creditors and purchasers by the act of 1784 (1 Rev. Stat., ch. 37, sec. 19). *West v. Dubberly*, 478.

4. Where the plaintiff claimed a slave under a fraudulent deed from the owner, who left the State, and afterwards the defendant purchased up a small account against him, on which he sued out an attachment and levied it on the slave, who was sold under it, and the defendant became the purchaser, *it was held* that his title was good, for that he must be considered both creditor and purchaser. *Spence v. Yellowly*, 551.

5. Where the possession does not accompany and follow the title, the transaction is fraudulent in law. *Gaither v. Mumford*, 600.

6. If an absolute deed is made of a chattel, and a defeasance is made at the same time, but separate from it, it shall not operate as a mortgage to the prejudice of third persons, but will be fraudulent and void as to creditors and purchasers. *Ibid.*

FREIGHT:

A *pro rata* freight may be recovered from the shipper, if he abandons the goods to the underwriter after the voyage is broken up by the stranding of the vessel. *Van Norden v. Littlejohn*, 457.

GAMING:

Money won at gaming and paid cannot be recovered back by the loser. *Hodges v. Pitman*, 276.

GIFTS:

Delivery is necessary to complete the gift of a chattel, unless it be granted by deed or is incapable of delivery; therefore, where a father, the day after the death of his son, relinquished to his son's widow all the right which he had to a distributive share of his son's estate, but without deed or delivery, and in the absence of the widow, *it was held* that the father might still recover such distributive share. *Bullock v. Timmes*, 251.

GRANT:

A grant of land covered by an arm of the sea only at high water will entitle the grantee to an action of trespass *quare clausum fregit* for taking oysters from the rocks within the grant. *McKenzie v. Hulet*, 613.

GUARANTY:

Where the defendant undertook, in a letter to the plaintiff, that he would guarantee "any contract which A. should make with him for a vessel and cargo, or any part thereof," and A. made a contract for the same, but did not comply with it, *it was held* that the guaranty made by an endorser was a *conditional one*, but that here the undertaking was that A. should comply, and not that he should be able to comply; and that the defendant became pledged to the same extent that A. was bound, as soon as the plaintiff parted with his property. *Williams v. Collins*, 382.

GUARDIAN AND WARD:

Where a person enters upon the estate of an infant, and continues the possession, equity will consider such person as a guardian to the infant, and will decree an account against him, and will even carry on such account after the infancy is determined. *Parmentier v. Phillips*, 294.

HARBORING:

1. Under the act of 1791, which gives a penalty for harboring and maintaining runaway slaves, harboring means a fraudulent concealment, and the maintaining must also be secret and fraudulent. *Dark v. Marsh*, 228.

2. Where slaves ran away from the plaintiff and were found in the possession of the defendant, who openly maintained them and gave notice to the plaintiff that he should retain them until recovered by law, *it was held* that no action could be sustained under the act of 1791. *Ibid.*

HORSE RACING:

1. A. and B. entered into a covenant with C. and D. to run a horse race on a certain day "for $500," to be staked in bonds with approved security. A. alone executed a bond with security, but gave C. and D. no notice of it. Upon the horse of A. B. winning the race, an action was brought on the covenant against C. and D., when *it was held* that they could not recover, because, first, the bond was signed by A. only, and, secondly, the defendants had no notice of it. *Hunter v. Jackson*, 21.

2. Where the articles of a horse race specify the sum bet, but say nothing as to the time of payment, the money is payable on the day of the race, and must then be staked. *Timmen v. Allison*, 305.

HOTCHPOT:

Where a testator died leaving one tract of land undisposed of, and leaving a daughter to whom he had given no land, but a full share of his personal estate, the other sons and daughters, or their children, if any of

HOTCHPOT—*Continued.*

them have died leaving children, if they claim a share of the land so undisposed of, must bring into hotchpot all the land settled upon them by the testator, either by deed or *devise*. *Norwood v. Branch*, 400.

HUSBAND AND WIFE:

1. When the wife on the day of her marriage, but before its solemnization, conveys slaves to her mother, the husband cannot, after their marriage, recover them back in right of his wife, although the conveyance was made without his knowledge or consent. *Johnston v. Noble*, 193.

2. Marriage operates as an absolute gift to the husband of all the personal estate of which the wife is in possession, whether he survive her or not; but to such as rests in action, the husband is only entitled on condition that he reduces it into possession during coverture. Hence, a warranty of title, annexed to a slave sold to the wife while sole, the slave being recovered from the husband after the death of the wife, does not survive to the husband, because, though relating to property which did vest in the husband, its essential quality as a *chose in action* remains unaltered. *Casey v. Fonville*, 287.

INDICTMENT:

1. It is not essential to the validity of an indictment that it should be signed by the prosecuting officer. *S. v. Vincent*, 105.

2. It is not necessary under the act of 1791 (1 Rev., ch. 338, sec. 3), in an indictment for perjury, to state that the person holding the court where the false oath was taken is a judge of the Superior Courts of law; the latter part of the third section of said act expressly dispensing with the necessity for such statement. *S. v. Bryson*, 115.

3. An indictment cannot be sustained which charges merely an intention to pass counterfeit bank notes, knowing them to be counterfeit, without charging any culpable act. *S. v. Penny*, 130.

4. A person may be indicted for an assault, committed in view of the court, though previously fined for the contempt. The plea of "*autrefois convict*" shall not avail him, because the same act constitutes two offenses: one against the court, and the other against the public peace. *S. v. Yancey*, 133.

5. In an indictment in the county court it is not necessary since the act of 1784 (1 Rev. Stat., ch. 35, sec. 12) to describe the defendant by the addition of his occupation. *S. v. Newmans*, 171.

6. And even if the indictment were defective from the omission of the addition, a plea in abatement which commences "and the said A. B. (the defendant) comes," etc., is in substance defective, since it admits the defendant to be the person indicted. *Ibid.*

7. When there is one continuing transaction, though there may be several distinct asportations in law, yet the party may be indicted for the final carrying away, and all who concur are guilty, though they were not privy to the first or the intermediate acts. *S. v. Trexler*, 188.

8. An indictment which charges a person with stealing a thing destitute of both intrinsic and artificial value cannot be supported; therefore,

INDICTMENT—*Continued.*

an indictment was quashed which charged a person with larceny in stealing "one-half ten-shilling bill of the currency of the State." *S. v. Bryant*, 249.

9. An indictment will lie against the commissioners of the town of Fayetteville for culpable omission and negligence in not repairing the streets; because they are vested with the power to levy the taxes, one object of which is to keep the streets in order. *S. v. Commissioners of Fayetteville*, 419.

10. Where an indictment states that the defendant, on a certain day in a certain year, with force and arms, *at and in the county of Craven*, a male slave called J. B. of the value of fifty shillings, and the property of W. M., of the county of Craven, in the State of North Carolina, feloniously, etc., and the jury find the defendant guilty on such count, judgment will not be arrested for omitting the words "then and there being found," or what is technically called the *ad tunc and ibidem*. *S. v. Sparrow*, 530.

11. A caption to an indictment is only necessary where the court acts under a special commission; and a mistake in the caption of an indictment found in a court which sits by the authority of a public law will not vitiate the indictment. *S. v. Wasden*, 596.

12. A man may be indicted separately under the act of 1805 (1 Rev. Stat., ch. 32, sec. 46) for fornication and adultery. *S. v. Cox*, 597.

13. If an indictment for forgery contains such a charge as amounts to that crime at common law, the judgment shall not be arrested, although the prisoner be indicted under the statute. *S. v. Walker*, 661.

14. If a man is indicted for perjury in swearing that he did not *execute* a certain deed, and the jury find specially that he is guilty of perjury in *denying his signature*, the judgment must be arrested; for a deed may be executed without actual signing; and when from the finding of the jury the defendant may be innocent, he will not be presumed guilty. *S. v. Avera*, 669.

15. A person who contracts with the county to keep a bridge in repair is indictable for neglect of that duty. *S. v. Crowell*, 683.

INDIAN TITLE:

1. The grant made by the Governor in 1717 to the Tuscarora tribe of Indians is absolute and unconditional, and does not require the residence of the Indians upon the land. *Sacarusa v. King*, 336.

2. The *proviso* in the act of 1748, ch. 2, sec. 3, being in derogation of rights equally vested in the plaintiffs, cannot be regarded. But if the act of 1748 could rightfully superadd the condition contained in the *proviso*, subsequent legislatures had an equal right to modify or abrogate it. And the acts of 1778, ch. 16, and of 1802, make a different appropriation of the land, on the happening of either of the events mentioned in the act of 1778, from that made by the act of 1748. *Ibid.*

INJUNCTION:

1. Where a defendant at law might have had adequate relief, a court of equity will not sustain a bill filed by him for an injunction, on the

INJUNCTION—*Continued.*

ground that he did not attempt to prove a material fact, in consequence of the advice of his counsel that it was unnecessary. *Fentress v. Robins*, 610.

2. By the act of 1810 (1 Rev. Stat., ch. 32, sec. 13) bonds given upon obtaining injunctions are put upon the same footing, as to the mode of enforcing them, as appeal bonds, and the proper mode of proceeding upon them is by a *sci. fa.* *Bozman v. Armistead*, 616.

3. When in an answer to an injunction bill the facts on which the complainant grounds his equity are positively denied, or when the truth of them is greatly impaired by reason of the facts and circumstances stated in the answer, and the defendant swears that he has no knowledge of the truth of complainant's allegations, and that he disbelieves them, and from the facts and circumstances so set forth and sworn to, complainant's equity is rendered doubtful, the court will dissolve the injunction. *McFarland v. McDowell*, 15.

4. If an injunction be sustained on bill and answer, and the complainant regularly takes depositions, they may be read on another motion to dissolve, made by the defendant in consequence of the introduction of an amended answer, which he is permitted to file; but *ex parte* affidavits are not admissible. *Leroy v. Dickinson*, 110.

INTEREST:

A guardian is chargeable for interest on the accumulated balance of principal and interest annually, after deducting the necessary expenditures for his ward, unless he shows, to the satisfaction of the court, such equitable circumstances as ought, in conscience, to acquit him of his accountability for such interest. *Branch v. Arrington*, 230.

INFANCY:

An infant under the age of 21 years cannot dispose of his personal estate by will. *Williams v. Baker*, 401.

JUDGMENT:

1. A judgment obtained in one State is not *conclusive* between the parties when sued upon in another. *Peck v. Williamson*, 9.

2. A judgment confessed in vacation and then entered up by consent, as of the preceding term, is void, and cannot be validated by any subsequent act of the defendant. *Sloomb v. Anderson*, 77.

JURISDICTION:

Where an action is brought for the hire of a slave, and the jury assess damages to less than £30, the plaintiff must be nonsuited, under the acts of Assembly relating to jurisdiction. The act giving current jurisdiction to the Superior and county courts does not repeal that part of the act of 1777 which relates to nonsuit. *Williams v. Holcombe*, 33.

JUSTICE OF THE PEACE:

When a person signs a paper which may relate to his personal or to his political character, if it is intended to relate to the latter, it ought, for the sake of certainty, to be so expressed. But if the paper signed

JUSTICE OF THE PEACE—*Continued.*

be peculiar to his political character, there is no need of any addition to his signature. Therefore, a warrant signed by a justice of the peace, though he does not mention his official character, cannot, on that account, be avoided. *Siler v. Ward*, 161.

LARCENY:

Larceny cannot be committed unless the thing be taken against the will of the owner. Hence, if the thing be sent by the owner for the purpose of entrapping the taker, it will not be larceny. *Dodd v. Hamilton*, 471.

LEGACY:

1. Where a testator bequeathed to his daughter S. a negro girl Nanny, and to his wife a negro woman Fanny, the mother of Nanny, and to his daughter N. the first child Fanny should have, and then directed "that if Fanny should have three children more, they should belong to his daughters S. and N., two apiece, including Nanny; and all the rest (should she have more than three children, and my said daughters get two apiece) to be equally divided between my sons B. and D.," and in another clause bequeathed, "that should Fanny have three children so that my two daughters get two apiece, then at my wife's death Fanny, and the rest of her children to be the property of B. and D.," *it was held* that it was the necessary effect of every legacy to vest immediately, if not controlled or otherwise limited; that as soon, therefore, as three children were born of Fanny, they became vested in the daughters, who had then "two apiece," including Nanny; that Fanny and the rest of her increase then became vested in B. and D., which the subsequent death of one, the issue of Fanny then living, could not alter or affect. *Settle v. Wordlaw*, 40.

2. A testator bequeathed to himself a child's part, to his son A. several negroes, and all the rest of his estate to his heirs except his son A., "because he has received his part of my estate of every denomination." If the testator afterwards die intestate as to the part reserved, A. may come in for a distributive share of that part, for the words of exclusion relate only to the property contained in the residuary clause. *Forte v. Forte*, 105.

LIBEL:

If the libelous matter in a production be not direct, but only libelous by allusion or reference, the fact understood must be stated by introduction, and must be pointed at by explanatory innuendoes. *S. v. Neese*, 491.

LIMITATIONS, STATUTES OF:

1. The act of 1715 (1 Rev. Stat., ch. 65, sec. 11) will bar an action brought by a county trustee against the executors of a county ranger for money received by their testator in that character, where more than seven years had elapsed from his death to the bringing of the action. *Alexander v. Alexander*, 28.

2. An action of *debt* on a promissory note is not barred by the statute of limitations. *Johnston v. Green*, 129.

LIMITATIONS, STATUTE OF—*Continued.*

3. Where a mortgagor is permitted to remain in possession of the land, and, after the mortgage is forfeited, sells to another who has no notice, and who, together with his alienees, continues in possession seven years, claiming the land, that gives a title under the act of 1715 (1 Rev. Stat., ch. 65, sec. 1). *Baker v. Evans*, 417.

4. A will constitutes a color of title, and, if accompanied with seven years possession, will ripen into a perfect one. *University v. Blount*, 455.

5. The death of a tenant before seven years will not impede the progress of the act of limitations, provided the possession is continued a sufficient length of time after his death, by his heirs or others claiming under him. *Ibid.*

6. When the statute of limitations once begins to run, no subsequent disability will stop it. Therefore, where an ancestor brought an ejectment within a year after his title accrued, and continued to prosecute it until it abated by his death, at which period his heirs at law were infants, and they brought another ejectment within three years after their arriving at full age, it was held that they were barred. *Pearce v. House*, 722.

7. Where account books are put into the hands of a constable for collection, the books themselves are not evidence that the accounts are due, so as to charge the constable. *Johnston v. Donaldson*, 727.

MALICIOUS MISCHIEF:

Malicious mischief is confined to those cases where the act is done in a spirit of wanton malignity, without provocation or excuse, and under circumstances which bespeak a mind prompt and disposed to the commission of mischief; and does not include cases where the act is prompted by the sudden resentment of an injury which is calculated in no slight degree to awaken passion. Hence, an indictment for this offense will not lie where the defendant took a mare from his cornfield, where she was damaging his growing corn, to a secret part of the county, where he inflicted the wound with a view of preventing a repetition of the injury. *S. v. Landreth*, 331.

MALICIOUS PROSECUTION:

In an action for a malicious prosecution, whether there was probable cause is a question of law, but the facts which go to show it must be ascertained by the jury. *Leggett v. Blount*, 560.

MASTERS AND OWNERS OF VESSELS:

1. The master of a vessel is liable upon a bill of lading signed by him, containing no other exception than that of the dangers of the sea, though the goods are damaged by the unskillfulness of the pilot. *Harry v. Pike*, 519.

2. The shipper may sue either the master or owner upon a bill of lading signed by the master. *Ibid.*

3. Whether an action will lie for a *tort* against the master of a vessel for an injury done by the vessel, or to the goods while a pilot is on board, *quere*. *Ibid.*

MILLS:

1. Upon an appeal from the county court in the case of a petition under the act of 1809 for overflowing lands by the erection of a mill, the jury in the Superior Court must meet on the premises. *Andrews v. Johnson*, 26.

2. Whenever a person has sustained an injury in his property by the erection of a mill by another, it is necessary, if he wishes to obtain redress, first to file a petition in the county court according to the act of 1809. (1 Rev. Stat., ch. 74, sec. 9, *et reg.*) *Mumford v. Terry*, 308.

MURDER:

1. If upon an arraignment for murder the prisoner pleads in chief and is convicted, the judgment shall not be arrested because the venire returned to the Superior Court consisted of forty jurors instead of thirty, nor because one of the grand jurors was on the coroner's inquest. *S. v. McEntire*, 267.

2. Nor will it be arrested because it does not appear, on the face of the proceedings, that the bill was found upon evidence under oath or that any witness was sworn and sent to the grand jury. *Ibid.*

NEW TRIAL:

1. If it be proved that the party prevailing in the issue has tampered with the jury, a new trial will be granted. *Wright v. Wright*, 31.

2. Surprise in questions of law, if they be really such as to afford room for doubt, form a ground for a new trial; but not mistake of counsel in a plain point. *Lester v. Zachary*, 50.

3. If a defendant, on a trial for an assault and battery, produce a witness to prove that notice was given to the plaintiff to produce a warrant, on which defendant rested his justification, but the witness being unable to recollect what it was the plaintiff was required to produce, the plaintiff obtained a verdict, a new trial shall not be granted unless the defendant states in his affidavit that he could have made out his justification if he had been allowed to prove the contents of the warrant. *Gardner v. Harrel*, 51.

4. When the transcript sent to the Supreme Court contains so imperfect a statement of facts that the Court cannot decide satisfactorily to themselves, a new trial will be ordered. *Hatton v. Dew*, 137.

5. In a caveated entry, where the evidence had been fairly and fully submitted to the jury, and the case was entirely one of matter of fact, the court would not disturb the verdict. *McInnis v. McInnis*, 154.

6. Where the plaintiff neglected to produce on the trial an essential part of the evidence necessary to support his demand, and he alleged that he was taken by surprise, as the objection for the want of this evidence had not been made on several former trials, a new trial was refused. *Porter v. Wood*, 226.

7. In an action for slander, the court may grant a new trial after a verdict for defendant, if in the opinion of the judge the evidence authorized a verdict for the plaintiff, with exemplary damages. *Horton v. Reavis*, 256.

NEW TRIAL—*Continued.*

8. Where the law is clearly for the plaintiff, the court will grant a new trial, though several juries have found for the defendant. *Jones v. Ridley*, 280.

9. Where a cause is called in due course, and the plaintiff nonsuited for failing to appear, the court will grant a new trial upon a sufficient affidavit; but it is proper that it should be upon the payment of full costs. *Williams v. Harper*, 284.

10. In an action for a *tort*, the court will not grant a new trial for excessive damages unless they are grossly extravagant, or unless there is just ground to believe that the jury have acted corruptly. *Dodd v. Hamilton*, 471.

11. When the charge of the judge is partly right and partly wrong upon the law arising from the evidence, and it is impossible to say upon what part of the evidence the verdict is founded, a new trial will be granted. *S. v. Jernagan*, 483.

NUISANCE:

For any of those acts which are in the nature of a public nuisance no individual is entitled to an action unless he has received an extraordinary and particular damage, not common to the rest of the citizens. Hence, *it was held* that an individual owning lands on a river where he was accustomed to take fish could not maintain an action against one who built a milldam across the river below him, whereby the passage of the fish up the river was obstructed. *Powell v. Stone*, 241.

OFFICE, SALE OF:

Any bond, contract, or agreement for the sale of the deputation of the office of clerk of a court, by which the party undertakes to pay a sum certain and not out of the profits, is void under Stat. 5 and 6 Edw. VI., ch. 16 (1 Rev. Stat., ch. 80, sec. 2). *Haralson v. Dickens*, 103.

PATROL:

Where the county court does not form rules and regulations for patrollers, under the act of 1802, ch. 15, they must conform to those of 1794, ch. 4; and under that act *one* patroller has not a right to inflict a punishment by himself; and if private persons aid and abet him, though called upon by him to do so, they, as well as he, are all trespassers. *Richardson v. Saltar*, 505.

PLEADING AND PRACTICE:

1. In a proceeding by a *sci. fa.* against sureties upon an appeal bond, the defendants, by not putting the record in issue, admit the statements in the *sci. fa.* to be correct. *Evirett v. Ellison*, 25.

2. Upon an indictment for a maim, if no issue be joined between the State and the defendant, judgment must be arrested. *S. v. Fort*, 122.

3. When a statement is referred to in a bill of equity and prayed to be taken as part of it, a copy of the statement must be served on the defendant, or it will be equivalent to no service of the bill, and advantage cannot be taken of it by plea in abatement under the act of 1782 (1 Rev. Stat., ch. 32, sec. 4), which applies only to a case of an *illegal*

PLEADING AND PRACTICE—*Continued.*

service, as where the bill has not been served ten days before court, and not a case where there has been no service. *Worthington v. Colhane*, 166.

4. Where a bill in equity is served upon a party, who neglects to answer, and the bill is taken *pro confesso* and the cause set for hearing, after which he dies, his administrator may be allowed to answer, upon affidavit made that the intestate, for a considerable time before his death, was reduced to such a state of mental debility as unfitted him for business. But it was also ordered that the complainant should have the benefit of the depositions, taken without notice, while the judgment *pro confesso* was in force. *Haywood v. Coman*, 204.

5. A plea of alien enemy, entered at a term subsequent to that at which the original pleas were entered, is not a plea in bar of the action generally, but only in bar of the further maintenance of the suit, and, being a plea since the last continuance, shall not, since the act of 1796 (1 Rev. Stat., ch. 31, sec. 62), amount to a relinquishment of former pleas. *Teare v. White*, 210.

6. To an action on the case against the defendants for negligently keeping their ferry, in which damages were laid at more than £100, they pleaded in abatement that the plaintiff lived in one county and they in another, and that the "matter in contest was not of the value of £50." The plea is bad, for the words of the act of 1793 (1 Rev. Stat., ch. 31, sec. 42) are "debt or demand," and not "the matter in contest"; and further, the action is *ex delicto*, and, therefore, no one can say, before verdict, what the damages will be. *McGehee v. Draughon*, 240.

7. When a replication is filed to an answer, the complainant may have the opinion of the jury upon the facts in issue, and if the complainant does not proceed in the proper time, the regular course is to set the cause for hearing absolutely, or with such provisions as the court may direct, but not to dismiss the bill. *Marshall v. Marshall*, 318.

8. Where a judgment in ejectment was entered against a defendant, because he had not given bond for the costs, as required by the act of Assembly, and a writ of possession had issued and the plaintiff put into possession, the court, on the application of the defendant at the next term and his affidavit "that he would have given the security for costs had he known it was necessary, and that he believes he has a good title to the lands in dispute," should, upon a rule's being served on the plaintiff, order the judgment to be set aside, a writ of restitution to issue, and the defendant be permitted to plead, on giving bond and security as required by act of Assembly. *Beaner v. Pilley*, 329.

9. Where on a note payable to three persons the suit was brought in the name of the survivor, the court permitted the attorney in fact of the plaintiff of record to dismiss the suit, though it was alleged and offered to be proved that the beneficial interest was really in another person. *Jones v. Blackledge*, 342.

10. The plea of the statute of limitations may be pleaded, after issue joined, upon payment of full costs, under peculiar circumstances. *Hamilton v. Shepard*, 357.

PLEADING AND PRACTICE—*Continued.*

11. A plaintiff cannot abandon a count upon special agreement, and recover upon the common count, upon the ground that the evidence of the special agreement has been lost. *McFarland v. Patterson*, 421.

12. A court of law cannot look into the *equitable* claim of persons who are or are not parties, but must dispose of each case as the rules of *law* direct. Hence, a release from an equitable assignee of a bond shall not be admitted to defeat a suit in the name of the legal owner of such bond. *Arrington v. Horne*, 435.

13. After the testimony in a cause is closed, the introduction of other witnesses is a matter within the sound discretion of the court, and will be allowed or forbidden according to the nature of the action, the conduct of the parties, and the necessity of receiving further evidence for the advancement of justice. *Kelly v. Goodbread*, 468.

14. Where an administrator is fixed with assets by the finding of a jury, and execution issues, on which *nulla bona* is returned, the next proper process is a *sci. fa.* suggesting a *devastavit*, and not a special *fi. fa.*, for an action of debt for a *devastavit* may be brought instead of the *sci. fa.* *Hunter v. Hunter*, 558.

POSSESSION:

1. The plaintiff in an action of trespass *quare clausum fregit* must show that when the trespass was committed he had either active or constructive possession of the land. Therefore, where the plaintiff had purchased land at an execution sale in November, 1804, but did not obtain a deed from the sheriff till July, 1805, and in the intermediate time, to wit, 10 February, 1805, the defendant committed the trespass, claiming under the defendant in the execution, *it was held* that the action could not be maintained. *McMillan v. Hafley*, 186.

2. Constructive possession exists only when the party claiming his title to the land, and there is no one in actual possession, claiming under an adverse title. *Ibid.*

3. The possession under color of title which is necessary to give title to the plaintiff and enable him to recover in ejectment must be continued and uninterrupted for seven years. *Jones v. Ridley*, 280.

4. The possession of a part of a tract of land is possession of the whole claimed by a deed, where there is no adverse possession or superior title. *Fitzrandolph v. Norman*, 564.

POWER:

1. In the execution of a power it is not necessary to recite that the act is done by virtue of the power, but it is sufficient if it can be done *only* in virtue of it; for the purpose of the act can only be explained by resorting to the power. *Hendricks v. Mendenhall*, 371.

2. Where a power is created by a deed, authorizing a husband to appoint to whom land shall be conveyed, and, in case of his death before his wife, authorized her to do it, there must be not merely an intention in the husband to appoint, but an actual appointment in the precise form required by the power, before the wife's right of appointment is defeated. Therefore, where a power requires, among other requi-

POWER—*Continued.*

sites, that the trustee should convey to such person as the husband should limit or appoint, and the husband executes afterwards an instrument of writing, authorizing the trustee to convey to whom he pleases in his discretion, this is not an execution of the power, nor a destruction of that subsequently limited to the wife. *Haslin v. Kean*, 700.

PRESUMPTION:

1. A presumption in law arises, from the payment of the last installment upon a bond, that the preceding ones have been paid, provided it has been made in the manner and at the time contemplated by the parties. If otherwise, it is a presumption that the parties are acting under a new agreement. *Ward v. Green*, 206.

2. The lapse of fifteen years, unaccompanied by other weighty circumstances, is not sufficient to raise the presumption of the payment of a judgment. *Lenox v. Greene*, 261.

3. Presumptive evidence ought not to be erected on surmise, and especially against a record, but on a solid foundation, and is only created when the circumstances are such as to render the opposite supposition improbable. It ought also to be stronger to defeat a right than to support it; and the facts from which a presumption is deduced ought to be consistent with the proposition they are intended to establish. *Ibid.*

4. The presumption of a grant can never arise unless the party claiming has been in the actual possession of the land. *Cutler v. Blackman*, 368.

5. A grant may be presumed from great length of possession, although no privity can be traced between the successive tenants. And in such a case a color of title for the land, as to part of the time, may be offered to the jury as a circumstance. *Fitzrandolph v. Norman*, 564.

6. The act of 1791 (1 Rev. Stat., ch. 65, sec. 2) making certain possessions valid against the State does not affect the common-law principle of presuming a grant. *Ibid.*

PRACTICE:

1. Where the plaintiff obtains a verdict, but the statement of the case shows he had no title, a new trial must be granted. But if the merits appear to be with the plaintiff, the court will give him leave to add other counts. *Pollok v. Kittrell*, 585.

2. Where the plaintiff sued out sixteen warrants against the defendant upon *due-bills*, the highest of the warrants including only $4, the court, on motion, refused to consolidate the warrants, principally on account of the policy of the act against due-bills. *Smith v. Bowell*, 633.

3. Where the jury decide against the weight of evidence in a case where no flagrant breach of duty is committed by the person in whose favor they find; where, also, there may reasonably exist a difference of opinion; and where it is certain that justice has been done, the court will not grant a new trial upon the bare probability that the contract is usurious. *King v. Hill*, 644.

PRACTICE—*Continued*,

4. It is the province of a jury in an equity suit to try only such disputed *facts* as the parties by the bill and answer submit to them; but to find that a sale is justifiable is a *conclusion of law*, not submitted to them. *Jones v. Zollicoffer*, 645.

5. It is the province of a judge, in a case of homicide, to explain the law to the jury, leaving to them the exclusive decision as to the truth or falsehood of the facts given in evidence: Hence, it is not improper for him to charge the jury that "the prisoner was guilty of murder, or guilty of no offense at all—that it was not a manslaughter case," if the facts deposed to by the witnesses, if believed, established a case of murder. *S. v. Walker*, 662.

6. The true construction of the act of 1810, ch. 12, allowing *sci. fa*, on injunction bonds, seems to be that the obligee might sue by *sci. fa.* on all such bonds, whether executed after or before the passage of the law. *Bozman v. Armstead*, 688.

7. If the plaintiff summon not more witnesses than the number allowed by law, and they are absent when the trial comes on, but the plaintiff nevertheless recovers, upon the plaintiff's affidavit that they were material and were expected by him at the trial, the defendant shall pay the costs of their former attendance. *Carpenter v. Taylor*, 680.

PURCHASER:

1. A court of equity will not compel a purchaser for a valuable consideration, without notice, to part with any legal advantage he has over his adversary, although he may have obtained it accidentally or improperly; nor will it compel him to discover his title, or title deeds or boundaries, nor to surrender title deeds, nor suffer testimony to be perpetrated against him: because a court of law would do none of these things. But where nothing is asked of them but what a court of law would compel him to perform, equity affords him no protection, and does not allow him to withhold the property of another. *Jones v. Zollicoffer*, 645.

2. When a bill is filed by one, who has the legal title, but under such circumstances that he cannot be completely redressed at law, it is no defense for the purchaser to plead that he purchased for a valuable consideration without notice. Such plea will only protect the honest purchaser after he has got the legal title. *Ibid.*

REFUNDING BOND:

A refunding bond given by a distributee is not void because but one surety is given. The one is not less bound than if two or more had been given. *Cheatham v. Boykin*, 670.

REGISTRATION:

1. No deed in itself invalid and inoperative, as for the want of a consideration either good or valuable, is rendered valid by registration; registration being only required for the purpose of perpetuating titles to land. *Stanly v. Smith*, 124.

2. The act of 1785 (1 Rev. Stat., ch. 37, sec. 29), which requires the registration of marriage contracts, makes them void against creditors only, if it be omitted. *Richardson v. Fleming*, 341.

REMOVAL:

1. An affidavit for the removal of a cause is sufficient under the act, 1 Rev. Stat., ch. 31, sec. 120, if it state that the adverse party has considerable influence which he will probably exert, and that many persons hold freeholds under him who may be turned off at his pleasure. *Smith v. Hortler*, 131.

2. Where a suit has been depending several terms, and one of the defendants married, her husband, who was made a party, was permitted, on sufficient affidavit, to remove the cause to another county for trial. *Knowis v. Baker*, 196.

REPLEVIN:

The action of replevin cannot be supported unless a *taking* is proved. *Cummings v. McGill*, 535.

ROADS:

1. By the act of 1784 (1 Rev. Stat., ch. 104, secs. 1-4) the interposition of a jury is necessary in the laying out, altering, or changing roads; but in deciding in the first instance that there shall be a road in a particular section of the country, or in discontinuing such roads as may be deemed useless, the jury has nothing to do; the whole power being given to the court. *Carr v. Hairston*, 20.

2. An appeal would not lie from the decision of the county court, in the case of a petition for a private way before the act of 1813 (1 Rev. Stat., ch. 104, s. 3). *Wood v. Hood*, 126.

3. In an indictment against an overseer of the road, it is necessary to show that he had been served with a notice of his appointment ten days before the offense charged. *S. v. Everit*, 436.

ROBBERY:

1. The snatching a thing unawares is not considered a taking by force; but if there be a struggle to keep it, or any violence done to the person, the taking is robbery. *S. v. Trexler*, 188.

2. Where the prosecutor accidentally, in the presence of the prisoner, dropped some papers out of his pocket-book, among others a bank note of $100, and the prisoner took it up and refused to deliver it whereupon a struggle ensued between the prosecutor and the prisoner for the possession of the note, which resulted in the prisoner's retaining possession and running off with the note, *it was held* that as the bank note was not the subject of larceny, it was a forcible trespass. *Ibid.*

SCIRE FACIAS:

A *sci. fa.* issued upon a judgment *nisi* for a forfeiture, which does not state any sum to have been accrued by the forfeiture, is fatally defective. *Holding v. Holding*, 324.

SHERIFF:

1. A sheriff may surrender a person whom he has taken under a *ca. sa.* to the court whence the writ issued at the return term thereof, and have the surrender entered of record, without giving notice of it to the plaintiff in the execution. *Rutherford v. Allen*, 69.

SHERIFF—*Continued.*

2. A sheriff may confine, in the prison of his own county, a person arrested by him on a *ca. sa.*, but he cannot imprison him in the county whence the writ was issued. Nor can the sheriff of the county whence the writ issued imprison a person surrendered on the return of the *ca. sa.* unless a *committitur* be entered of record. *Ibid.*

3. The verdict of a jury summoned by a sheriff to find whether goods belong to the defendant in an execution cannot bind the rights of the litigating parties, and can only have the effect to satisfy *himself* on the question of property; to govern his discretion in the exercise of his office; to excuse him for returning *"nulla bona,"* and to mitigate the damages in an action of trespass, should the goods taken not belong to the defendant. *Pearson v. Fisher*, 72.

4. *It seems* that the plaintiff in an execution may sustain an action against a sheriff who refuses to sell property because a jury has found that it does not belong to the defendant, if in fact it was his; but if the plaintiff offer the sheriff an indemnity, the action certainly may be maintained. *Ibid.*

5. The return on a *fi. fa.* of "not satisfied" is not a due return under the act of 1777 (1 Rev. Stat., ch. 109, sec. 18), and the sheriff making such return is consequently liable to an amercement of $100. *Douglas v. Auld*, 112.

6. A return upon a subpœna in the name of a person who subscribes his name with D. S. annexed (by which is understood deputy sheriff) is insufficient; for the court cannot judicially know a person deputed to act for the sheriff, because his authority rests upon the private delegation of the sheriff. The return should be in the name of the principal. *Holding v. Holding*, 324.

7. The return of a sheriff is upon oath, and therefore concludes a party in many cases; but a return of a person styling himself deputy sheriff has no greater verity than that of any private individual. *Ibid.*

8. That the sheriff was kept off by force of arms is a good return upon *mesne* process; for upon such process he may, but is not obliged to, raise the *posse comitatus*. *Crumpler v. Glisson*, 516.

SLAVES:

1. A parol gift of a slave by a father to his son is void under the act of 1784 (1 Rev. Stat., ch. 37, sec. 19) as against creditors. *Pearson v. Fisher*, 72.

2. A parol gift of slaves by a father to his child is void under the act of 1784 (1 Rev. Stat., ch. 37, sec. 19) as against creditors. *Sherman v. Russell*, 79.

3. The punishment of a slave for horse stealing is whipping and loss of ears for the first offense, and death for the second, under the act of 1741, ch. 8, sec. 10, the subsequent acts prescribing the punishment of horse stealing not extending to slaves. *S. v. Levin*, 250.

4. A person may be convicted for stealing a runaway slave, knowing him to be a runaway and to whom he belonged. *S. v. Davis*, 271.

SLAVES—*Continued.*

5. If an indictment charge the stealing a slave, "the property of A. B., deceased," judgment must be arrested, for it should have charged the slave to be the property of A. B.'s executors or administrators. *Ibid.*

6. A mortgage of slaves is valid under the act of 1792 (1 Rev. Stat., ch. 37, secs. 19 and 21) without an attesting witness, between the parties. *Cotten v. Powell*, 313.

7. A written transfer of slaves is necessary, under the act of 1806 (1 Rev. Stat., ch. 37, sec. 17), in all cases where a person gives slaves to another. *Ibid.*

8. The third section of the act of 1806 (Rev., ch. 701, sec. 3), relating to gifts of slaves theretofore made, refers only to adverse claims. Hence, where, after a parol gift made prior to 1806, by a father to his son, the possession of the slaves was sometimes in the father and then in the son, but the title was acknowledged by the father to be in the son, *it was held* that the possession of the father was not adverse, and the third section of the act referred to did not apply. *Drew v. Drew*, 321.

9. Where the wife, to whom her father had made a parol gift of slaves prior to 1806, was an infant when the act was passed in that year relative to such gifts, and married during her infancy, *it was held* that the act did not bar a suit brought by her husband and herself more than three years after the passage of the act. *Allen v. Gentry*, 411.

10. Larceny or seduction of a slave under the act of 1779 (1 Rev. Stat., ch. 34, sec. 10) cannot be committed in a slave, where the owner, through his agent, consents to the taking and asportation, though such consent was given for the purpose of apprehending the felons. But where the defendants bring a slave to a particular place, after such assent of the owner, but in pursuance of a plan matured before the assent given, if the jury are satisfied that both defendants were privy to the felony and equally concerned, they may properly convict them. *S. v. Jernagan*, 483.

11. Larceny may be committed in taking a runaway slave, knowing him to be runaway and to whom he belonged. *Ibid.*

12. Whether a person convicted as an aider or abetter under the act of 1779 is entitled to the benefit of clergy, *quere*. *Ibid.*

SLANDER:

1. It is not actionable to say of a man, "He, one of our little Chowan justices of the peace, was taken up a few nights ago playing cards with negro Quomana, in a rookery box, and committed to jail, and remained there until next day, 9 or 10 o'clock, and then was turned out and split for the country," when it is not charged in the declaration that the plaintiff was a justice, or that the words were spoken of him in relation to his office. *McGuire v. Blair*, 328.

2. It is not actionable to say of a person that he swore to a lie "in obtaining a warrant from a justice respecting a deer," where it appeared that the justice had no jurisdiction of the offense, and therefore perjury could not be committed in it. *Boling v. Luther*, 635.

TAXES:

1. The purchaser of land sold for taxes is not bound to show that the sheriff advertised the land agreeably to law. *Stanly v. Smith*, 124.

2. When the sheriff sells an entire tract of land for taxes on the whole, when no tax is due for one-third part, the sale is void. *Jones v. Gibson*, 480.

TENANT AT WILL:

A tenancy at will is not created until the lessee enters. Hence, a tenant at will who has never had possession cannot maintain ejectment. *Pollok v. Kittrell*, 585.

TOWN OF FAYETTEVILLE:

An ordinance passed by the commissioners of the town of Fayetteville directing the constable to take up and sell all hogs found running at large in the streets is void, because the act of Assembly gives every person who thinks himself aggrieved by the judgment of the commissioners the right of appeal, and because such ordinance condemns the property without hearing the owner. *Shaw v. Kennedy*, 591.

TRESPASS:

1. Trespass, and not case, is the proper remedy against a person who takes out an execution upon a judgment which he knows to be satisfied; and the action may be sustained against an assignor of the judgment who received the satisfaction, though the execution was taken out in his name by the assignee. *Bradley v. Carrington*, 38.

2. An action of trespass is the proper remedy against one who enters the plaintiff's house, under a warrant, to search for a runaway slave. *Gardner v. Neil*, 104.

3. An action of trespass for chattels will lie, either upon an actual or constructive possession. *Carson v. Noblet*, 136.

4. So, if the owner have the right of present possession, and can regain the possession when he pleases, though the actual possession be in another. *Ibid.*

5. In an action of trespass for entering the plaintiff's close and taking his oysters and making profit of the shells, the proper rule of damages is the clear profit made by the defendant. *McKenzie v. Hulet*, 613.

TROVER:

Trover cannot be maintained on the possession of a chattel where it appears that the legal title is in another, and that the plaintiff has only a trust. *Laspeyre v. McFarland*, 620.

TRUST:

If a person enters land, knowing it to have been previously appropriated, he becomes a trustee for all equitable claimants under such appropriation. *Benscin v. Lenoir*, 117.

2. The jurisdiction of equity over trusts can only be taken away by showing the complete execution of the trust; and where one buys a slave for another with the money of the other, but takes a bill of sale to

TRUST—*Continued*,

himself, a mere delivery of the slave to the *cestui que trust* will not be considered an execution of the trust to oust the jurisdiction of a court of equity over the subject. *Jordan v. Jordan*, 292.

USURY:

Where an usurious agreement is made in this State, but the illegal interest is received in South Carolina, an action will not lie for the penalty. *Graham v. Lowrie*, 622.

UNITED STATES DUTY:

Where a person makes pig-iron at his own furnace, which he works into bar-iron at his own forge, the article is liable, under the act of Congress of 1815, for a distinct duty in each stage of its manufacture. The exemption of articles for the maker's own use signifies for his own consumption. *Frew v. Graham*, 609.

WARRANTY:

1. Upon an eviction, the seller of land warranted is liable only to the original value at the time of sale, that is, the purchase money with interest, and not to the increased value at the time of eviction, whether such increase of value arises from the ordinary and regular rise of property or from improvements or otherwise. *Philips v. Smith*, 87.

2. Where a person sold a slave "about 11 years of age, sound and healthy, and do by these presents further covenant and agree to warrant the right," etc., *it was held* to amount to a warranty of soundness. *Gilchrist v. Marrow*, 410.

WIDOW:

Where a widow dissents from her husband's will, she is not entitled to a year's provision under the act of 1796. *Collins v. Collins*, 301.

WILL:

1. A petition filed to set aside the probate of a will must be accompanied with an affidavit. *Moss v. Vincent*, 298.

2. Though a paper-writing be called a deed in the body of it, and the party was advised to make a deed, yet if the structure and operation of the writing show it to be testamentary, made with a view to the disposition of a man's estate upon his death, it will enure as a will. *Henry v. Ballard*, 397.

3. An application to set aside the probate of a will on the ground of irregularity must be made to the court where the will was finally tried, and not to the court where it was first offered for probate. *Harper v. Gray*, 416.

4. Where on the trial of an issue of *devisavit vel non* the will was attested by two witnesses, one of whom was absent from the State and whose credibility was impeached at the trial, so that the will was proved only by the other, whose testimony, if credible, the court instructed the jury was sufficient to establish the will, although the absent witness was proved incredible, the jury found against the will, and the court refused to grant a new trial. *Wright v. Wright*, 429.

WILL—*Continued.*

5. A petition to set aside the probate of a will must be accompanied with an affidavit made before a person competent to take it. One made before a magistrate of another county will not be sufficient. *Jeffreys v. Alston*, 438.

6. Where a will of land appears to have been attested by two witnesses, and the certificate of probate states that it was proved by one, it will be intended *prima facie* that it was *legally* proved by him. *University v. Blount*, 455.

WITNESS:

1. In an action of slander the plaintiff is entitled to two witnesses to prove the first speaking of the words, and two for each repetition of them, and as many to meet the defense set up by the defendant as the court may deem to have been necessary. *Byrd v. Rouse*, 53.

2. Two *sci. fas.* issued to the county where the witness resided when he was summoned, on which "not found" is returned, are sufficient to authorize the entry of a judgment against him. *Thompson v. Johnston*, 108.

3. A person who removes to another State after being recognized or summoned on the part of the State, is entitled to mileage from the place of his actual residence. *S. v. Stewart*, 138.